

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

United States of America,  
  
Plaintiff  
  
v.  
  
Keith Michael Costa,  
  
Defendant

**2:13-cr-00337-JAD-GWF-1**

**Order Denying Motions for Transfer to  
Federal Custody**

[ECF Nos. 38, 39]

On May 24, 2014, I sentenced Keith Michael Costa to 180 months in prison for his carjacking and felon-in-possession-of-a-firearm conviction to run concurrent to the sentence yet to be imposed in his state-court case, Case no. C292423.<sup>1</sup> On October 8, 2015, the state district-court judge sentenced Costa to 540 months in prison with parole eligibility after 162 months to run concurrent to his federal sentence in this case, and he recommended that Costa “be released to Federal Government to do his time.”<sup>2</sup>

Costa has filed a “motion to transfer to federal prison”<sup>3</sup> and a “motion for U.S. marshals to take immediate custody of the defendant,”<sup>4</sup> both requesting that he be transferred to the Bureau of Prisons (BOP) to serve his time in federal custody. “Federal prison officials are under no obligation to, and may well refuse to, follow the recommendation of state sentencing judges that a prisoner be transported to a federal facility.”<sup>5</sup>

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<sup>1</sup> ECF No. 37.

<sup>2</sup> ECF No. 38 at 2–4. I take judicial notice of the state-court order attached to Costa’s motion.

<sup>3</sup> ECF No. 38.

<sup>4</sup> ECF No. 39.

<sup>5</sup> *Del Guzzi v. United States*, 980 F.2d 1269, 1272 (9th Cir. 1992) (Norris, J. concurring).

1 It is unclear from the record before me whether federal prison officials have refused to follow  
2 the state court's recommendation, or whether that recommendation has ever been communicated to  
3 them. But the BOP has undoubtedly seen my recommendations in the judgment of conviction that  
4 Costa be designated to a facility in the state of Arizona and be permitted to participate in the  
5 Residential Drug Abuse program,<sup>6</sup> and Costa has still not been transferred to a federal facility.

6 Assuming that I have the authority to order the Marshals to take possession of Costa from a  
7 Nevada state prison and transfer him to the custody of the BOP, I decline to do so. Costa may be  
8 eligible for parole from his state-court sentence after serving only 162 months. If that happens, then  
9 Costa will be released to federal custody to serve the remaining 18 months of his federal sentence  
10 after which he will be released. On the other hand, Costa may not be paroled from his state-court  
11 sentence until well after his 180-month federal sentence has already expired. In that case, it would  
12 make little sense to order Costa into federal custody only to have him later released to state custody  
13 for a determination of whether he should be paroled from that sentence or continue to serve any  
14 portion of it. Because it is unclear whether Costa's state-court sentence will expire before  
15 completion of his federal sentence, I deny his motions.

16 **Conclusion**

17 Accordingly, IT IS HEREBY ORDERED that Costa's motion to transfer to federal prison  
18 [ECF No. 38] and motion for U.S. Marshals to take immediate custody of the defendant [ECF No.  
19 39] are **DENIED**.

20 Dated this 1st day of November, 2016.

21   
22 Jennifer A. Dorsey  
23 United States District Judge  
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28 <sup>6</sup> ECF No. 37 at 2.